- **THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU**
- **+W.P.No. 4729 of 2000**

-

%. 22.02.2005.

1. Gollavilli Primary Agricultural Coop. Credit Society Ltd., rep. by its Secretary-Mr.Pachimalla Babji S/o.Veeranna, age 48 years, Gollavilli, Uppalaguptam Mandal, East Godavari District.

.....Petitioner

Vs.

$ 1. The Oriental Insurance Co. Ltd., rep. by its Regional Manager, Regional Office, Snehalatha Complex, Begumpet, Hyderabad –16 and three others.

.....Respondents

Counsel for the Petitioner : Mr. V.Ajayakumar

Counsel for the Respondent Nos.1 to 3: Mr. S,Agastya Sharma

Counsel for the Respondent No.4: G.P. for Co-operatives.

<Gist :

>Head Note:

? Cases referred:

1. 1998 (4) ALD 699

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 4729 of 2000

Between:

Gollavilli Primary Agricultural Coop. Credit Society Ltd.,
rep.by its Secretary Mr.Pachimalla Babji
S/o.Veeranna, age 48 years, Gollavilli,

Uppalaguptam Mandal, East Godavari District.

..... PETITIONER

AND

1. The Oriental Insurance Co. Ltd., rep. by its Regional Manager,
   Regional Office, Snehalatha Complex, Begumpet,

Hyderabad – 16.
2. The Oriental Insurance Co. Ltd., rep. by its Branch Manager,
   Branch-1, P.B.No.397, Museum Road, Vijayawada – 2,
   Krishna District.
3. The Oriental Insurance Co. Ltd., rep. by its Divisional

Manager, Divisional Office, Sri Krishna Complex,

Opp:Municipal Girls High School,
   Jawahar Street, Kakinada, East Godavari District.
4. The District Cooperative Central Bank rep. by its General

Manager, Nagamalli Thota, Kakinada,

East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, or order or direction more particularly one in the nature of Certiorari quashing the communication issued by the 3rd respondent dated 25/1/2000 rejecting the claim of the petitioner society for its member namely N.Satyanarayana for payment of compensation under "JANATA GROUP INSURANCE SCHEME" by declaring the same as illegal, arbitrary and violative of fundamental rules guaranteed under the Constitution of India.

Counsel for the Petitioner: MR.V.AJAYAKUMAR

Counsel for the Respondent Nos.1 to 3: MR.S.AGASTYA SHARMA

Counsel for the Respondent No.4: G.P. FOR CO-OPERATIVES

The Court made the following :

O R D E R :

Petitioner a Society registered under the provisions of the Andhra Pradesh Co-operative Societies Act, 1964, in pursuance of the decision taken by the Andhra Pradesh Co-operative Banks Association on 27.03.1999, to continue the benefit of the Janata Group Accident Insurance Scheme for the members of the various Co-operative Primary Agricultural Societies, in order to cover the risk of its members

paid the required premium of Rs.8.70 ps. for each of its members on 28.05.1999 to the first respondent. N.Satyanarayana, a member of the petitioner society, who was bitten by a dog on 02.05.1999, and was undergoing treatment died on 03.07.1999 due to Rabies, as certified by the Civil Assistant Surgeon, Government Hospital, Amalapuram. Consequently petitioner made a claim for payment of one lakh rupees due to the death of the said Satyanarayana, which was turned down by the first respondent on the ground that the risk commenced on 02.05.1999 long before the payment of premium on 28.05.1999. Hence, this petition for a direction to the first respondent to pay the amount of one lakh rupees due to the death of its member Satyanarayana.

2. The contention of the learned Counsel for the petitioner is since N.Satyanarayana and others were members of the Janata Group Insurance Scheme for the period 1998-99 also, even assuming that the risk which resulted in his death commenced even before payment of the premium for 1999-2000 on 28.05.1999 petitioner is entitled to receive payment from the first respondent since he was covered by the Janata Group Insurance Scheme for 1998-99 also.

3. The contention of the learned Counsel for first respondent is that during 1998-99 the Janata Group Insurance Scheme policy taken by the petitioner was in force from 13.04.1998 to 12.04.1999 and since the risk took place on 02.05.1999, subsequent to the expiry of the period of policy for the period 1998-99, and since risk took place prior to the payment of premium for 1999-2000, question of first respondent paying any amount to the petitioner does not arise. In reply, the contention of the learned Counsel for the petitioner is that since premium for 1998-99 was paid on 08.06.1998 risk for 1998-99 should cover the period 08.06.1999 to 07.06.1999, and so the petitioner is entitled to the relief sought. He placed strong reliance on *G.Laxminarasamma (Smt.) v. Director, A.P.Engg.Research Labs., Himayathsagar,*

Hyderabad and another case.

4. At the outset it should be stated that the case of the petitioner is that since it took out the policy to cover the risk of its members for 1999-2000 and since its member Satyanarayana died on 03.07.1999 it is entitled to receive one lakh rupees from the first respondent. There is no whisper about its paying the premium for 1998-99. It is only during the course of arguments, the learned Counsel for the petitioner contended that since petitioner was a member of Janata Group Insurance policy for 1998-99 also, petitioner is entitled to the benefit under the scheme in respect of the death of its member Satyanarayana.

5. The documents produced by the first respondent, show that the group insurance policy issued by the first respondent to the petitioner for the year 1998-99 was valid from 13.04.1998 to 12.04.1999. The risk in this case admittedly took place on 02.05.1999, subsequent to the expiry of the policy for the period 1998-99. The contention of the learned Counsel for the petitioner that since premium for the year 1998-99 was paid on 08.06.1998 the risk period should be from 08.06.1998 to 07.06.1999 and since the accident took place on 02.05.1999, well within the period of one year from the date of payment of premium petitioner is entitled to Rs.50,000/- as per the policy for 1998-99 if not Rs.1,00,000/- as per the policy of 1999-2000. I am not able to agree with his contention because the policy issued by the first respondent shows that its validity period is from 13.04.1998 to 12.04.1999. Remittance of the amount might have been delayed by the petitioner. Even otherwise, if the contention of the learned Counsel for petitioner is to be accepted, petitioner would be having the benefit of two policies for parts of May and June 1999, because as per the policy issued by the first respondent for 1999-2000 its validity was from 28.05.1999 to 27.05.2000 and according to the Counsel for

petitioner, the policy for 1998-99 should be from 08.06.1998 to 07.06.1999. How can there be two policies in operation between 28.05.1999 to 07.06.1999?

6. *G.Laxminarasamma* case (1 supra) relied on by the learned Counsel for petitioner has no application to the facts of this case. No doubt the premium in that case also was paid after the risk took place and yet the insurer was directed to pay the amount on the ground

> "Nothing is produced before the Court by the Management of the 2nd respondent-Insurance Company to show that the Group Janata Personal Accident Policy would cover only accidents and not deaths".

But in this case, as stated earlier, even the communication sent to the petitioner shows that in cases when death occurs due to an accident only would the claim be answered by the insurer. So, as stated above, date of accident but not date of death is relevant for making the insurer liable.

7. The Policy for the year 1999-2000 commenced on 28.05.1999 and was valid till 27.05.2000. No doubt the death of the victim took place on 03.07.1999 i.e. after payment of the premium, but the date of death of the victim is of no consequence to decide this case, because his death was the result of an accident that took place on 02.05.1999, prior to the date of commencement of the policy. From the "urgent circular" dated 28.04.1999 of the District Cooperative Central Bank Limited, Kakinada, produced by the petitioner it is seen that "Insurance amount would be paid only (if) the death occurred due to an accident". So, death of a member due to an accident is the *sine qua non* for the petitioner's eligibility to receive the insurance amount. It is well known that in cases of death due to an accident the insurance must be available on the date of accident, but not on the date of death. If the policy is taken subsequent to the occurring of the accident and if the victim dies as a result of

the said accident, even if the policy of insurance is taken before the death of the victim it can be of no avail because the contract of insurance was not in force by the date of accident, and since it is well known that all contracts of insurance are contracts *Uberrima fide* i.e. contract of utmost good faith. So all the material facts, which have a bearing on the contract have to be disclosed to the insurer. In this case since the risk took place subsequent to the expiry of the policy for 1998-99 and before the commencement of the policy for 1999-2000, petitioner cannot be granted any relief.

8. In the above circumstances, petitioner is not entitled to any relief. Hence, the writ petition is dismissed. No costs.

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C.Y.SOMAYAJULU, J.

Dated: 22nd February, 2005.

NOTE:

L.R.copy to be marked.

B/O

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Regional Manager, Oriental Insurance Co. Ltd.,
   Regional Office, Snehalatha Complex, Begumpet,

Hyderabad – 16.
2. The Branch Manager, Oriental Insurance Co. Ltd.,
   Branch-1, P.B.No.397, Museum Road, Vijayawada – 2,
   Krishna District.
3. The Divisional Manager Oriental Insurance Co. Ltd.,

Divisional Office, Sri Krishna Complex,

Opp:Municipal Girls High School,
   Jawahar Street, Kakinada, East Godavari District.
4. The General Manager, District Cooperative Central Bank,

Nagamalli Thota, Kakinada, East Godavari District.

5. Two C.Cs. to the Government Pleader for Cooperatives, High

Court Buildings, Hyderabad. (O.U.T.)

6. Two C.D copies

Form-NIC-OGS/WP{TPK}